

RECEIVED

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

MAY 24 2022

US DISTRICT COURT

United States District Court		District	MID DIST TENN
Name (under which you were convicted): TERIOUS D. RAMEY		Docket or Case No.: 3:18-cr-00237-1	
Place of Confinement: A. U. S. P. THOMSON		Prisoner No.: 25759-075	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. TERIOUS D. RAMEY	

MOTION

03-22 0378

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT
OF TENNESSEE NASHVILLE DIVISION.

(b) Criminal docket or case number (if you know): 3:18-cr-00237-1

2. (a) Date of the judgment of conviction (if you know): JAN. 24, 2020

(b) Date of sentencing: JAN. 24, 2020

3. Length of sentence: 2
- ⁰⁴
- MONTHS

4. Nature of crime (all counts): 18 U.S.C. §§ 922(g)(1) + 924

5. (a) What was your plea? (Check one)

(1) Not guilty ☒(2) Guilty ☐(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(b) Docket or case number (if you know): 20-5149

(c) Result: "AFFIRM"

(d) Date of result (if you know): NOV. 23, 2020

(e) Citation to the case (if you know):

(f) Grounds raised: DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM A SEARCH CONDUCTED AFTER AN ARREST FOR WHICH THERE WAS NO PROBABLE CAUSE AND FROM AN AUTOMOBILE FOR WHICH THERE WAS NO REASON NOT TO OBTAIN A WARRANT - DID THE TRIAL COURT PLAINLY ERR IN FAILING TO DISMISS THE VENIRE PANEL, OR AT LEAST CONDUCT FOLLOW UP QUESTIONING OF THE VENIRE PANEL, AFTER A POTENTIAL JUROR MADE PREJUDICIAL COMMENTS DURING JURY SELECTION - DID THE TRIAL COURT PLAINLY ERR IN FAILING TO REMOVE FOR CAUSE A JUROR WHO WORKED FOR THE SAME POLICE DEPT. AS FOUR OF THE FIVE GOVERNMENT WITNESSES WHO TESTIFIED AT APPELLANT'S TRIAL

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: MR. RAMEY "BURGLARY" OFFENSE IS A INSUFFICIENT PREDICATE TO ENHANCE UNDER "ACCA".

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE DRAMATIC CHANGE TO THE DEFINITION OF A CRIME OF VIOLENCE AND THE SPECIFIC EXCLUSION OF BURGLARY OFFENSE AS A "ACCA" OFFENDER, A CRIME QUALIFIES AS A VIOLENT FELONY IF ONE OF ITS ELEMENTS INVOLVES THE USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OF ANOTHER. BURGLARY RELIES UPON THE RESIDUAL CLAUSE UNDER "ACCA" BECAUSE IT DENIES FAIR NOTICE AND INVITE ARBITRARY ENFORCEMENT. BURGLARY HAS BEEN ELIMINATED OF ENUMERATED OFFENSES THAT CONSTITUTION CRIMES OF VIOLENCE. BURGLARY OFFENSES IN NOT WHAT CONGRESS MEANT TO USE TO DETERMINE HIGHER PENALTY UNDER "ACCA" GUIDELINES. BURGLARY DOES NOT SATISFY ELEMENTS OR SUBSTAIN RISK AND RECKLESSNESS THAT THE "ACCA" PROVIDED BURGLARY DOES NOT SATISFY THE "ACCA".

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

UNFORESEEN ISSUE, PETITIONER DID NOT UNDERSTAND, AND COUNSEL

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: THE USE OF 18 U.S.C. § 922(g) POSSESSION OF FIRE UNDER 18 U.S.C.S. 924(E)(2)(B)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE USE OF POSSESSION OF A FIREARM INCREASED "MR. RAMEY" SENTENCE UNDER "ACCA". THE RESIDUAL CLAUSE AGAIN VIOLATES FIFTH AMENDMENTS GUARANTEE OF DUE PROCESS SINCE THE INDETERMINACY OF THE WIDE RANGE INQUIRY REQUIRED BY THE RESIDUAL CLAUSE. THE RESIDUAL DOES NOT SERVICE THE ~~PROBABLE~~ PROHIBITION OF VAGUE CRIMINAL LAWS BECAUSE THE RESIDUAL CLAUSE LEAVES GRAVE UNCERTAINTY HOW TO ESTIMATE THE RISK POSED BY A CRIME. THE GOVERNMENT MUST PROCEED ACCORDING TO THE (LAW OF THE LAND) THAT IS ACCORDING TO THE WRITTEN CONSTITUTIONAL AND STATUTORY PROVISIONS. THE MERE PRESENCE OF A FIREARM DOES NOT TRIGGER THE ENHANCED FORCE CLAUSE.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

UNFORESEEN DUE TO THE OVERTURING 922g

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: MIR. RAMEY "BURGLARY" OFFENSE DIDNOT FALL UNDER THE "ACCA"
WHEN HE CAUGHT HIS CHARGE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE DISTRICT COURT VIOLATED THE "EX POST FACTO CLAUSE" WHEN THEY
SENTENCED ME UNDER GUIDELINES OF A LAW THAT PASSED AFTER I
WAS ALREADY FIGHTING MY CHARGE WHICH INCREASED MY SENTENCE

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

UNFORESEEN ISSUE, PETITIONER DID NOT UNDERSTAND.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 5.8.22
(month, date, year)

Executed (signed) on James R. Lamy (date)

James R. Lamy
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

"

IN LIGHT OF

UNITED STATES SUPREME

COURT DECISION"

141 S.Ct. 1817; 210 L.Ed 63; 2021

ARGUED NOV. 3, 2020
DECIDED JUNE 10, 2021

MEMORANDUM CONCERNING
THE UNDERLYING CONVICTION
AND RELEVANT FACTS

THE ARMED CAREER CRIMINAL ACT (ACCA) MANDATES A 15-YEAR MINIMUM SENTENCE FOR PERSON FOUND GUILTY OF GUILTY OF ILLEGALLY POSSESSING A FIREARM WHO HAVE "THREE" OR MORE PRIOR CONVICTION FOR A "VIOLENT FELONY." AN OFFENSE QUALIFIES AS A VIOLENT FELONY UNDER "ACCA" ELEMENTS CLAUSE IF IT NECESSARILY INVOLVES USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OF ANOTHER, 18 U.S.C. § 924(E)(2)(B)(i). IN *LEOCAL* VS. ASHROFT, 543 U.S. 1, 125 S.Ct. 377 160 L. Ed. 2d 271, THE COURT HELD THAT OFFENSES REQUIRING ONLY A NEGLIGENT MENS REA FALL OUTSIDE A RELEVANTLY IDENTICAL DEFINITION, ID @ 9. THE "CRITICAL ASPECT" IN DETERMINING THE RELEVANT MENS REA, THE COURT EXPLAINED, WAS THE STATUTE'S DEMAND THAT THE PERPETRATOR USE PHYSICAL FORCE "AGAINST THE PERSON OR PROPERTY OF ANOTHER," 160 L. Ed. 2d 271 (EMPHASIS IN ORIGINAL). THEN IN *VOISINE* VS. UNITED STATES, 579 U.S. 686, 136 S.Ct. 2272, 195 L. Ed. 2d 736, THE COURT HELD THAT RECKLESS CRIMES FALL WITHIN A DIFFERENT STATUTORY DEFINITION - THIS ONE REQUIRING THE USE OF PHYSICAL FORCE, BUT LACKING THE "AGAINST" PHRASE. *LEOCAL* DEEMED CRITICAL IN BOTH DECISIONS, THE COURT LEFT OPEN WHETHER RECKLESS OFFENSES WOULD SATISFY "ACCA" ELEMENTS CLAUSE.

THE PHRASE "AGAINST ANOTHER," WHEN MODIFYING A VOLITIONAL ACTION LIKE THE "USE OF FORCE," DEMANDS THAT THE PERPETRATOR DIRECT HIS FORCE AT ANOTHER INDIVIDUAL. RECKLESS CONDUCT IS NOT AIMED IN THAT PRESCRIBED MANNER. *LEOCAL* CONFIRMS THAT CONCLUSION. WHEN READ AGAINST THE WORDS "USE OF FORCE," THE COURT EXPLAINED, THE "AGAINST" PHRASE - THE DEFINITION'S "CRITICAL ASPECT" - SUGGESTS A HIGHER DEGREE OF INTENT THAN (AT LEAST) NEGLIGENCE. 543 U.S. @ 9. THAT UNDERSTANDING OF AGAINST CONTRADICTS THE GOVERNMENT'S VIEW THAT

THE PHRASE HERE DOES INCORPORATE A MENS REA REQUIREMENT, THE ORDINARY MEANING ALSO INFORMS THIS CONSTRUCTION. AS "LEO" EXPLAINED, WE CANNOT FORGET THAT WE ULTIMATELY ARE DETERMINING THE ~~MENS REA~~ MEANING OF THE "CRIME OF VIOLENCE," 543 U.S. @ 11. THE COURT SAID THE SAME IN "JOHNSON V. UNITED STATES," 559 U.S. 133, 130 S. CT 1265, 176 L. ED 2D 1, WHEN CONSTRUING LANGUAGE IN ("ACCA") DEFINITION OF "VIOLENT FELONY" ID, @ 139-140 WITH THAT FOCUS IN PLACE BOTH DECISIONS CONSTRUED THE DEFINITIONS AT ISSUE TO MARK OUT A NARROW "CATEGORY OF VIOLENT, ACTIVE CRIMES" ID, @ 40; 543 U.S. @ 11. AND THOSE CRIMES ARE BEST UNDERSTOOD TO INVOLVE A PURPOSEFUL OR KNOWING MENTAL STATE - A DELIBERATE CHOICE OF WREAKING HARM ON ANOTHER, RATHER THAN MERE INDIFFERENCE TO RISK

"CONGRESS" ENACTED ("ACCA") TO ADDRESS THE SPECIAL DANGER CREATED WHEN A PARTICULAR TYPE OF OFFENDER - A VIOLENT CRIMINAL POSSESSES A GUN. "BEGAY" V. USA, 553 U.S. 137, 146, 128 S. CT 1581, 170 L. ED 2D 490. AN OFFENDER WHO HAS REPEATEDLY COMMITTED PURPOSEFUL, VIOLENT, AND AGGRESSIVE CRIMES POSES AN UNCOMMON DANGER OF USING A GUN DELIBERATELY TO HARM A VICTIM. A CRIME THAT CAN BE COMMITTED THROUGH MERE RECKLESSNESS DOES NOT HAVE AS AN ELEMENT THE "USE OF PHYSICAL FORCE" BECAUSE THAT PHRASE HAS A WELL-UNDERSTOOD MEANING APPLYING ONLY TO INTENTIONAL ACTS DESIGNED TO CAUSE HARM, ID, @ - , 136 S. CT. 2272, 195 L. ED 2D 736, 756 "RAMEY" PRIOR OFFENSE'S WOULD FALL WITHIN ("ACCA") RESIDUAL CLAUSE ~~HAVE~~ ^{IT HAS} THAT PROVISION NOT BEEN DECLARED UNCONSTITUTIONAL IN JOHNSON V. USA, 576 U.S. 591, 135 S. CT. 2851, 192 L. ED 2D 569. THOUGH "JOHNSON" WAS WRONGLY DECIDED IT (MUST) STATE LAWS PROHIBITING

RECKLESS PASSION, AND BURGLARY. "CONGRESS" DID NOT PROVIDE FOR A 15 YEAR MANDATORY PRISON TERM WHERE THE INCREASED LIKEHOOD OF GUN VIOLENCE DOES NOT EXIST. THE "(ACCA)" PENALTY ENHANCEMENT KICKS IN ONLY WHEN A DEFENDANT HAS COMMITTED NO FEWER THAN "THREE" OFFENSES MEETING THE STATUTE'S DEFINITION OF "VIOLENT FELONY". THAT DEFINITION IN ADDITION TO TICKING OFF SEVERAL SPECIFIC CRIMES... "BURGLARY" AND "ARSON". AN OFFENSE QUALIFIES AS A "VIOLENT FELONY" UNDER THAT CLAUSE IF IT HAS AS AN ELEMENT THE USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OF ANOTHER, 924(e)(2)(i). IF ANY - EVEN THE LEAST CULPAB OF THE ACTS CRIMINALIZED DO NOT ENTAIL THAT KIND OF FORCE, THE STATUTE OF CONVICTION DOES NOT CATEGORICALLY MATCH THE FEDERAL STANDARD, AND SO CANNOT SERVE AS AN "(ACCA)" PREDICATE, SEE "JOHNSON VS. USA," 559 U.S. 133 137, 13 S.Ct 1265

THE GOVERNMENT VIOLATES THIS GUARANTEE BY TALKING AWAY SOMEONES LIFE, LIBERTY, OR, PROPERTY UNDER A CRIMINAL LAW SO VAGUE THAT IT FAILS TO GIVE ORDINARY PEOPLE FAIR NOTICE OF CONDUCT IT PUNISHES, OR SO STANDARDLESS THAT IT INVITES ARBITRARY ENFORCEMENT. THE "(ACCA)" REQUIRES COURTS TO USE A FRAMEWORK KNOWN AS THE CATEGORICAL APPROACH WHEN DECIDING WHETHER AN OFFENSE IS: "BURGLARY," "ARSON," OR "EXTORTION" INVOLVES USE OF "EXPLOSIVES", OR OTHERWISE INVOLVES CONDUCT THAT PRESENTS A SERIOUS POTENTIAL RISK OF PHYSICAL INJURY TO ANOTHER UNDER THE CATEGORICAL APPROACH, A COURT ASSESSES WHETHER A CRIME QUALIFIES AS A VIOLENT FELONY IN TERMS OF HOW THE LAW DEFINES THE DEFINITION OF A VIOLENT FELONY THAT ASKS WHETHER THE CRIME HAS AS AN

ELEMENT THE USE OF PHYSICAL FORCE THE RESIDUAL CLAUSE ASKS WHETHER THE CRIME INVOLVES CONDUCT THAT PRESENTS TOO MUCH RISK OF PHYSICAL INJURY/ WHAT IS MORE THE INCLUSION OF "BURGLARY" EXTORTION AMONG THE ENUMERATED OFFENSES PRECEDING THE RESIDUAL CLAUSE CONFIRM THAT THE COURT'S TASK ALSO GOES BEYOND EVALUATING THE CHANCE THAT THE PHYSICAL ACTS THAT MAKE UP THE CRIME WILL INJURE SOMEONE. THE ACT OF MAKING AN EXTORTIONATE DEMAND OR BREAKING AND INJURY ARISES BECAUSE THE EXTORTIONIST MIGHT ENGAGE IN VIOLENCE AFTER MAKING HIS DEMAND OR BECAUSE THE BURGLAR MIGHT CONFRONT A RESIDENT IN THE HOME AFTER BREAKING AND ENTERING. THE INDETERMINACY OF THE WIDE-RANGE INQUIRE REQUIRED BY THE RESIDUAL CLAUSE BOTH DENIES FAIR NOTICE TO DEFENDANTS AND INVITES ARBITRARY ENFORCEMENT BY JUDGES. THE RESIDUAL CLAUSE LEAVES GRAVE UNCERTAINTY ABOUT HOW TO ESTIMATE THE RISK POSED BY A CRIME, IT TIES THE JUDICIAL ASSESSMENT OF RISK TO A JUDICIALLY IMAGINED "ORDINARY CASE" OF A CRIME, NOT TO REAL WORLD FACTS OR STATUTORY ELEMENTS. IT'S ONE THING TO APPLY AN IMPRECISE "SERIOUS POTENTIAL RISK" STANDARD TO REAL-WORLD FACTS IT IS QUITE ANOTHER TO APPLY IT TO A JUDGE-IMAGINED ABSTRACTION, WHETHER THE CRIME OTHERWISE INVOLVES CONDUCT THAT PRESENTS A SERIOUS POTENTIAL RISK, MORE-OVER THE CRIME "BURGLARY", "ARSON", "EXTORTION", AND CRIMES INVOLVING THE USE OF EXPLOSIVE THESE OFFENSES ARE FAR FROM CLEAR IN RESPECT TO THE DEGREE OF RISK EACH POSES,

U.S. SUPREME COURT OPINIONS COULD BE READ TO SUGGEST OTHERWISE, THE SUPREME COURT'S HOLDING SQUARELY CONTRADICT THE THEORY THAT A VAGUE PROVISION IS CONSTITUTIONAL MERELY BECAUSE THERE IS SOME CONDUCT THAT CLEARLY FALLS WITHIN THE PROVISION

GRASP. IN THE CONDUCT THAT CLEARLY FALLS, IN THE CONTEXT OF 18 U.S.C. § 924(E)(2)(B), THE U.S. SUPREME COURT'S DECISIONS REFUTE ANY SUGGESTION THAT THE EXISTENCE OF SOME OBVIOUSLY RISKY CRIMES ESTABLISHES THE RESIDUAL CLAUSE CONSTITUTIONALITY, THE U.S. SUPREME COURT DOES NOT DOUBT THE CONSTITUTIONALITY OF LAWS THAT CALL FOR THE APPLICATION OF A QUALITATIVE STANDARD SUCH AS "SUBSTANTIAL RISK" TO REAL-WORLD CONDUCT; THE LAW IS FULL OF INSTANCES WHERE A MAN'S FATE DEPENDS ON HIM ESTIMATING RIGHTLY SOME MATTER OF DEGREE IN THE CONTEXT OF 18 U.S.C. § 924(E)(2)(B) THE RESIDUAL CLAUSE, HOWEVER, REQUIRES APPLICATION OF THE "SERIOUS POTENTIAL RISK" STANDARD TO AN IDEALIZED ORDINARY CASE OF THE CRIME, BECAUSE THE ELEMENTS NECESSARY TO DETERMINE THE IMAGINARY IDEAL ARE UNCERTAIN BOTH IN NATURE AND DEGREE OF EFFECT, THIS ABSTRACT INQUIRY OFFERS SIGNIFICANTLY LESS PREDICTABILITY THAN ONE THAT DEALS WITH THE ACTUAL, NOT WITH AN IMAGINARY CONDITION OTHER THAN THE FACTS.

THE "ACCA" REFERS TO "A PERSON WHO HAS" THREE PREVIOUS CONVICTIONS FOR - NOT A PERSON WHO HAS COMMITTED - "THREE" PREVIOUS VIOLENT FELONIES OR DRUG OFFENSES, THE EMPHASIS ON CONVICTIONS INDICATES THAT CONGRESS INTENDED THE SENTENCING COURT TO LOOK ONLY TO THE FACT THAT THE DEFENDANT HAD BEEN CONVICTED OF CRIMES FALLING WITHIN CERTAIN CATEGORIES, AND NOT TO THE FACT UNDERLYING THE PRIOR CONVICTIONS. THE U.S. SUPREME COURT ALSO HAS POINTED OUT THE UTTER IMPRACTICABILITY OF REQUIRING A SENTENCING COURT TO RECONSTRUCT, LONG AFTER THE ORIGINAL CONVICTION, THE CONDUCT UNDERLYING THAT CONVICTION, FOR EXAMPLE IF THE ORIGINAL CONVICTIONS RESTED ON A GUILTY PLEA, NO RECORD OF THE UNDERLYING FACTS MAY BE AVAILABLE. THE PLAUSIBLE INTERPRETATION OF THE LAW THEREFORE REQUIRES USE OF THE CATEGORICAL APPROACH, IMPOSING

AN INCREASED SENTENCE UNDER THE RESIDUAL CLAUSE OF THE "ACCA" VIOLATES THE CONSTITUTION'S GUARANTEE OF DUE PROCESS. THE GOVERNMENT VIOLATES THE DUE PROCESS CLAUSE WHEN IT TAKES AWAY SOMEONE'S LIFE LIBERTY OR PROPERTY UNDER A CRIMINAL LAW SO VAGUE THAT ~~IF~~ IT FAILS TO GIVE ORDINARY PEOPLE FAIR NOTICE OF THE CONDUCT. "KOLENDER VS. LAWSON", 461 US 352, 357-358, 103 S. CT 1855, 75 L. ED 2D 903. COURTS MUST USE THE "CATEGORICAL APPROACH" WHEN DECIDING WHETHER AN OFFENSE IS VIOLENT FELONY, LOOKING "ONLY TO THE FACT THAT THE DEFENDANT HAS BEEN CONVICTED OF CRIMES FALLING WITHIN CERTAIN CATEGORIES, AND NOT TO THE FACTS UNDERLYING THE PRIOR CONVICTIONS." TAYLOR V. UNITED STATES, 495 U.S. 575, 600, 110 S. CT 2143, 109 L. ED 2D 607. DECIDING WHETHER THE RESIDUAL CLAUSE COVERS A CRIME THUS REQUIRES A COURT TO PICTURE THE KIND OF CONDUCT THAT THE CRIME INVOLVES IN "THE ORDINARY CASE", AND TO JUDGE WHETHER THAT ABSTRACTION PRESENTS A SERIOUS POTENTIAL RISK OF PHYSICAL INJURY. "JAMES", SUPRA, @ 208, 127 S. CT. 1586, 167 L. ED 2D 532. THE UNCERTAINTIES PRODUCE MORE UNPREDICTABILITY AND ARBITRARINESS THAN THE DUE PROCESS CLAUSE TOLERATES. THIS COURT REPEATED FAILURE TO CRAFT A PRINCIPLE STANDARD OUT OF THE RESIDUAL CLAUSE AND THE LOWER COURTS PERSISTENT INABILITY TO APPLY THE CLAUSE IN A CONSISTENT WAY CONFIRM ITS HOPELESS INDETERMINACY.

THE ACT DEFINES "VIOLENT FELONY" AS FOLLOWS: ANY CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR... THAT - (i) HAS AS AN ELEMENT THE USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OF ANOTHER; OR ...

OR OTHERWISE INVOLVES CONDUCT THAT PRESENTS A SERIOUS
POTENTIAL RISK OF PHYSICAL INJURY TO ANOTHER § 924(E)(2)(B)

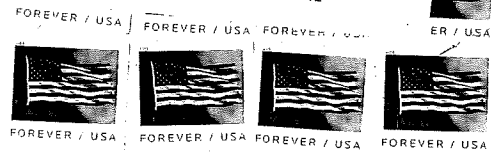
THE CLOSING WORDS OF THIS DEFINITION, ITALICIZED ABOVE, HAVE COME
TO BE KNOWN THAT THE RESIDUAL CLAUSE SINCE 2007 THIS COURT
HAS DECIDED FOUR CASES, ATTEMPTING TO DISCERN ITS MEANING.
THE PROHIBITION OF VAGUENESS IN CRIMINAL STATUTES IS WELL
RECOGNIZED REQUIREMENT. CONSONANT A LIKE AND A STATUTE
THAT FLOUTS IT VIOLATES THE FIRST ESSENTIAL OF DUE PROCESS.
THE COURT'S TASKS GOES BEYOND DECIDING WHETHER CREATED OF
RISK IS AN ELEMENT OF CRIME, THAT IS BECAUSE UNLIKE THE
PART OF THE DEFINITION OF A VIOLENT FELONY THAT ASKS WHETHER
THE CRIME HAS AS AN ELEMENT THE USE... OF PHYSICAL FORCE
THE RESIDUAL CLAUSE ASKS WHETHER THE CRIME INVOLVES CONDUCT
THAT PRESENTS TOO MUCH RISK OF PHYSICAL INJURY. BURGLARY OFF-
ERS NO HELP AT ALL WITH RESPECT TO THE VAST MAJORITY OF OFF-
ENDERS, WHICH HAVE SO APPARENT ANALOG AMONG THE ENUMER-
ATED CRIMES. INVOKING SO SHAPLESS A PROVISION TO CONDEMN
SOMEONE TO PRISON FOR 15 YRS, TO LIFE DOES NOT COMPORT
WITH THE CONSTITUTION'S GUARANTEE OF DUE PROCESS,

MR. RAMEY CONVICTION FOR POSSESSION OF A FIREARM
922(g) DOES NOT CONSTITUTE A "VIOLENT FELONY" UNDER THE RESIDUAL
CLAUSE OF THE (ACCA) FIREARMS UNDER CONVENTIONAL PRINCIPLES
OF INTERPRETATION AND OUR PRECEDING...

TERIOUS RAMEY #25759-075
US.P THOMPSON
P.O. Box 1002
Thompson, IL. 61285

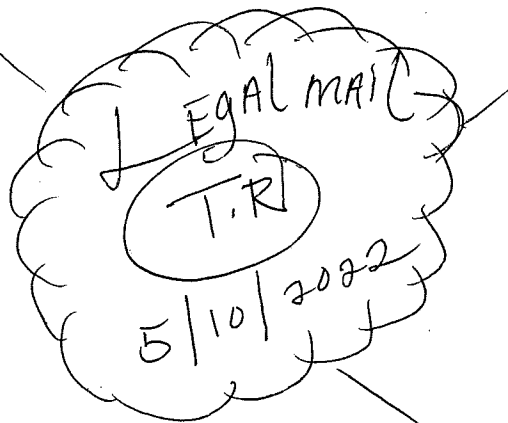


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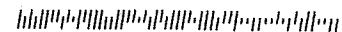


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